

WASHINGTON METROPOLITAN AREA TRANSIT COMMISSION

WASHINGTON, D. C.

ORDER NO. 2577

IN THE MATTER OF:

Served July 12, 1984

Application of FRANK J. UTLEY,)
Trading as UTLEY'S TRANSPORTATION)
SERVICE, for a Certificate to)
Conduct Special Operations --)
Lorton, Va.)

Case No. AP-84-08

Application of FRANK J. UTLEY,)
Trading as UTLEY'S TRANSPORTATION)
SERVICE, for Temporary Authority to)
Conduct Special Operations --)
Lorton, Va.)

Case No. AP-84-09

By applications filed March 6, 1984, and amended March 22, 1984, Frank J. Utley, trading as Utley's Transportation Service, seeks both temporary authority and a certificate of public convenience and necessity to transport passengers, in special operations, from the intersection of 11th and G Streets, N.W., Washington, D.C., to Lorton Reformatory, Fairfax County, Va., and return to any point within the District of Columbia. A public hearing was held on both applications on April 17, 1984. The District of Columbia, which protests both applications, appeared in opposition to any grant of authority to applicant.

Mr. Utley testified that he has, in the past, operated service substantially the same as that proposed in these applications. Early in 1984, he was notified by the Metropolitan Police that such service requires WMATC certification. Accordingly, Mr. Utley ceased operations and began preparation of the applications under consideration herein. As further evidence of his desire to comply with regulatory requirements, Mr. Utley testified that he conducts operations pursuant to approvals from the State of Maryland and the Interstate Commerce Commission and submitted into evidence a copy of his I.C.C. tariff.

Mr. Utley operates four vehicles ranging in seating capacity from 15 to 40 passengers. He proposes to operate three schedules each weekday evening and weekend morning to and from Lorton. The size of the vehicles to be used would vary with ridership patterns, and return schedules would be flexible so as to accommodate people desiring to attend special functions which are scheduled from time to time at Lorton.

which she has. She testified that Metro's service was extremely crowded.

Ms. Eyvonnia Johnson used Utley's Transportation Service to reach Lorton every Tuesday, Thursday, Friday, Saturday and Sunday prior to its cessation of operations. If Mr. Utley's application is granted, she would use his service again. She has never used Metro because of its reputation for being so crowded. She now visits Lorton on Thursdays only when a family friend drives there. Ms. Johnson took advantage of Mr. Utley's home dropoff service. She testified that without the home dropoff service she would not be able to use public transit because the walk from the bus stop to her home is dangerous at night.

Ms. Estelle Henderson testified that she has used both Metro and Utley's Transportation Service to travel to Lorton. According to Ms. Henderson all Metro buses run late from D.C., and they are very crowded with standees. Moreover, she has been left at Lorton by Metro. She finds applicant's schedule better suited to her needs. If Mr. Utley's application is granted, she would use his service. Ms. Henderson testified that although she can take a bus to the central pickup point, she must use a cab to return home at night. Mr. Utley's home dropoff service, however, would be less expensive and more convenient than cab service.

Mr. Charles Fortune, a driver for Utley's Transportation Service, testified in support of the applicant. According to Mr. Fortune applicant's service offers the following advantages over the Metro service: (1) Utley's allows for arrangement of pickup and dropoff service; (2) should persons not be admitted to the reformatory after traveling to Lorton, they have a place to wait until it is time for the return ride (Metro buses are not available for this service); (3) Utley's provides service for special functions and on holidays; and (4) vans will wait for passengers who may be delayed. When Mr. Fortune has had occasion to observe Metro, operations to Lorton were erratic, with buses often late in departing D.C. Mr. Fortune testified that Metro buses depart Lorton exactly on schedule, even leaving passengers who are in plain view at departure time.

Ms. Sherri Y. Alston, acting administrator for the District of Columbia Office of Mass Transit, is in charge of the transportation service provided from the District to Lorton pursuant to a contract between the District and the Washington Metropolitan Area Transit Authority (WMATA). By means of a prepared statement, Ms. Alston testified that the District's subsidization of WMATA service to Lorton was instituted in 1979 as the result of complaints from citizens regarding the high fees charged by private carriers offering a similar service. In 1981 articulated buses were substituted to provide additional capacity. As of the date of the hearing, Metro will operate three trips daily from 11th and G Streets, N.W., with an additional

vehicle on Tuesdays, Thursdays, Saturdays, Sundays and holidays when all facilities at Lorton have visiting hours. The one-way fare is \$1.25 for adults and 60 cents for children, the same fare charged in 1979. The District has demonstrated a commitment to providing the Lorton service through its level of financial support. Since the inception of the service, the District's subsidy has increased by 126 percent from \$9,281 to \$21,003 in 1983. Requests for additional service can be made to WMATA on two days' notice. The District will soon be conducting a survey of Lorton riders for the purpose of determining convenient alternative boarding locations in the District and to obtain additional information regarding the level of demand for the Lorton service.

On cross-examination Ms. Alston testified that the District is looking into alternative locations within the city for people to board the bus to Lorton and is considering adjusting bus service to accommodate for special functions. However, Metro is not contemplating home pickup and dropoff. Ms. Alston testified further on cross-examination that the Lorton service operates at a 70 percent or better cost-recovery ratio and that even with additional service she anticipates that this ratio will remain about the same.

Ms. Alston sponsored several exhibits including traffic studies. It is clear from these exhibits that Metro consistently operates with a ridership that exceeds seating capacity. It further appears that patronage on Metrobuses destined to Lorton consistently exceeds patronage on return trips. While Ms. Alston opined that some outbound riders return in private vehicles, she was unable to estimate the number which may do so involuntarily as a result of missing the return bus. Ms. Alston also testified that it is not the policy of the District of Columbia to provide a Metrobus seat for all Lorton visitors. In fact, lowering the number of standees would reduce Metro's load factor and increase the subsidy to be paid by the District of Columbia.

Title II, Article XII, Section 4(b) of the Compact provides that a certificate of public convenience and necessity shall be issued if

the applicant is fit, willing and able to perform such transportation properly and to conform to the provisions of this Act and the rules, regulations and requirements of the Commission thereunder, and that such transportation is or will be required by the public convenience and necessity; otherwise such applications shall be denied.

Title II, Article XII, Section 4(d)(3) of the Compact provides that

To enable the provision of service for which there is an immediate and urgent need to a point or points or within a territory having no carrier service capable of meeting such need, the Commission may, in its discretion and without hearings or other proceedings, grant temporary authority for such service.

The service Mr. Utley provided prior to ceasing operations and filing the instant applications was not profitable. Mr. Utley presented evidence that he lost approximately \$4,000 during the first half of 1983. Mr. Utley subsequently added two vehicles to gain additional revenues, but these will also generate additional expenses. Mr. Utley plans to use his own teaching salary to subsidize the transportation business in anticipation of achieving profitability. However, there is no evidence on this record that profitability can be achieved or that the proposed service is economically viable.

Metrobus service provided under contract with the District of Columbia is priced at \$2.50 per adult round-trip, just 62.5 percent of the \$4 fare at which Mr. Utley has already suffered losses on the order of 32 percent of gross revenues for the first half of 1983. In these circumstances it is not unreasonable to anticipate that Mr. Utley may, if this application were granted, have to seek tariff increases in an effort to meet expenses. This would further widen the fare gap, making it even more difficult to attract or retain passengers. This is particularly true when the District of Columbia has already alleviated overcrowding by adding more equipment and is considering service and schedule adjustments to make its service even more convenient and attractive.

Mr. Taylor, Ms. Johnson and Mr. Fortune all alluded to the desirability of home pickup service. However, we note that such service is not a feature of the applications here under consideration, even though such service was provided by applicant in the past.

Even Mr. Utley referred to home pickup service on cross-examination both by counsel for the District of Columbia and counsel for the staff. Staff counsel pointed out that home pickup service was beyond the scope of the application and asked Mr. Utley if he anticipated providing that additional service without charge. Mr. Utley responded that that was feasible within a certain radius, ". . . because we have many elderly people, some are with canes and crutches and so on, and they almost have to be picked up" (Tr. 69)

Mr. Utley's sincerity and compassion are evident, but this testimony has little bearing on the applications before us. Such authority, not having been sought by applicant, cannot be granted. Thus, there would be no service obligation to people who "almost have to be picked up." Further, as the distance from 11th and G -- and,

presumably, the need -- increases, the economic feasibility of home pickups decreases. Accordingly, while such testimony cannot support the applications at hand, it does tend to further undermine the economic viability of an operation that has lost money in the past and is projected to do the same in at least the near future.

Witnesses Taylor, Monroe, Fortune ^{1/} and Utley mentioned the extension of credit to passengers as an advantage of Mr. Utley's proposed service over the Metrobus service. Again, this is not a feature of these applications and, while it displays once more the compassion of the proposed operation, it fails to support the proposal and does little to allay our concerns about economic viability.

Witnesses Taylor, Monroe, Rose, Johnson, and Henderson testified concerning the overcrowding of Metrobuses. This is of major concern to us because it bears directly on the critical element of need for the proposed service. The most finite and substantial evidence on this point was presented by the District of Columbia's witness, Ms. Alston, in the form of D.C. Office of Mass Transit memoranda specifying passenger counts for Metrobus service, by date and trip, for the three months of 1984 prior to this hearing. These passenger counts present an unequivocal picture of serious overcrowding of particular trips, especially in the month of March. Yet this same evidence shows that this problem developed suddenly in the first quarter of 1984 and that the City has dealt with it.

For some time, the Metrobus service was apparently being supplemented by a number of unauthorized carriers, including Mr. Utley. The City was successfully accommodating the number of passengers who presented themselves to be transported. Then the Metropolitan Police Department put a stop to unauthorized operations. As Mr. Utley testified, "vans were impounded, drivers were incarcerated" (Tr. 59)

The City was suddenly faced with a huge increase in passengers. Ridership jumped from 3,821 in January and 3,725 in February to 7,139 in March. The City responded by adding more schedules with more and larger buses.

Confusion ensued, with the City attempting to adjust service to the new demand and passengers attempting to adjust to the cessation of unauthorized services and the new Metrobus schedules. As just one

^{1/} Simply because they are mentioned together here, we take this opportunity to note that Messrs. Taylor, Monroe and Fortune are drivers employed by applicant. While we have no reason to doubt the credibility of these witnesses, neither can they be said to be entirely impartial.

example, exhibit 8 shows that one Metrobus operated on Tuesday, March 6, and 110 souls clambered aboard. Again on Tuesday, the 13th, the single bus carried 109 people to Lorton. On the following Tuesday, the 20th, 198 persons were transported to Lorton. On this date the City provided ample capacity with three buses. Unfortunately, it is apparent that the passengers were unable to anticipate the quantity of service to be provided, for 104 people rode the first bus, 91 rode the second, and just 3 were carried on the last bus.

In the months of January and February, one Metrobus operated every day -- no more, no less. But by the last week of March, two Metrobuses were operated every day and a third bus was operated on Sunday, Thursday and Saturday. By the time this hearing was held on April 17, the City had added a third bus on Tuesdays as well, so that it was now operating 18 buses a week instead of 7. Finally, at the hearing, Ms. Alston testified that effective that same day the City would operate three buses on Mondays, Wednesdays and Fridays, and four buses on Tuesdays, Thursdays, Saturdays, Sundays and holidays, for a total of at least 25 buses a week, more than tripling the amount of service offered in January and February.

Therefore, it appears with regard to the basic service between downtown and Lorton that the City is now providing a level of service consistent with patronage. 2/ Accordingly, the need for additional "line-haul" service is called into serious question.

That leaves us to examine areas in which applicant's proposed service can be distinguished from that provided by the City. In other words, if there is no absolute need for the same service, is there a need for a different kind of service sufficient to warrant the authorization of the service proposed herein?

The first distinction that comes to mind is the fare. An adult round-trip is \$4 on Utley's, \$2.50 on Metrobus. We cannot find a 60 percent higher fare to be a distinguishing feature in applicant's favor. Applicant and his drivers have mentioned the practice of extending credit, but this is not, nor should it be, a feature of this application; and it does not enhance this application.

Certainly applicant's vehicles are different from the Metrobuses. The articulated Metrobuses seat about 72; Utley's range from 15 to 40. The newest of Mr. Utley's vehicles is nine years old, the oldest fourteen. Suffice it to say that the Metrobuses may be

2/ The record indicates that the articulated buses being used in this service seat about 72 passengers and that 25 buses a week are operated. Over four weeks, that would come to 7,200 seats, a figure that compares with the 7,139 passengers carried in March.

better suited for the line-haul between downtown and Lorton; the smaller vehicles are better suited for local distribution.

The evidence of Metrobus overcrowding has been compelling and, had the situation gone unattended, would practically have stood alone for the proposition that the proposed service is sorely needed. However, as we have noted, the City has moved quickly and effectively to cure this problem and this distinction has been removed.

Home pickup service has been discussed. Mr. Utley, who may have incorrectly taken staff counsel's question as a suggestion, testified that home pickup service at no additional charge was feasible within a limited radius. Leaving aside as unnecessary here any discussion of the tacking of "no additional charge unauthorized service" to authorized service, we do not find discretionary, no-obligation, unauthorized service a feature favoring this application.

Home dropoff service, however, is a very real part of this application. For \$2 extra, Utley's will take a passenger to any destination in the District of Columbia. The benefit of such a service at such a price is self-evident, especially when passengers find themselves downtown, after dark, after hours, perhaps needing transportation to more remote, hard-to-get-to areas.

Last on the list of distinguishing features is what might be called flexibility of scheduling. The evidence, at least with regard to Lorton departures, suggests that Metro is inflexible; i.e., it comes and goes as scheduled. The evidence suggests Utley's is flexible, i.e., it does not necessarily come and go as scheduled. As transportation regulators we are somewhat reluctant to find the latter an advantage over the former. Mr. Monroe testified that he has waited as long as 35 minutes for a passenger. It is not good policy, practical, or even safe, to keep 70 or more people waiting 35 minutes for one more passenger. Nobody wants to wait 35 minutes after he is ready to leave, not even the smaller 15- to 40-passenger groups on Utley's. Yet, in the more casual atmosphere of the smaller vehicle, it appears to be generally understood and accepted that who goes down comes back. So there is some advantage here, but it is enjoyed only by the few who are late.

Utley's, too, seems to have been more flexible with regard to special schedules and events at Lorton, adapting its schedule to accommodate them. This, too, is an advantage for the passenger.

In summary, then, (eliminating the negatives) we find that the positive factors distinguishing Utley's proposed service from the City's Metrobus service are the home dropoff service and, to a lesser extent, scheduling flexibility.

Ms. Alston testified that:

In the near future the District will conduct a survey of Lorton riders to determine specific ridership needs. This will enable us to identify the most convenient alternative boarding locations in the District of users of the service. It will also provide us with additional information on the level of demand for the Lorton service. [Tr. at pp. 100-101]

Our department in conjunction with the Department of Corrections at Lorton will be looking at the schedule for special functions, and we will be trying to coordinate the bus service in regard to the dates of those special functions. [Tr. at p. 111]

Since this is a public bus service we are not contemplating home pickup and drop-off. However, the District is looking at expanding alternative locations within the City for people to board the bus to Lorton. [Tr. at p. 111]

. . . we're going to be conducting a survey to take a look at alternative boarding sites within the District of Columbia. [Tr. at p. 120]

I've indicated that with the advent of the summertime and special programs that we will work to putting some flexibility into the schedule so that people will be able to take advantage of the activities that are going on at Lorton. [Tr. at p. 126]

Questioned about the testimony concerning passengers stranded at Lorton, Ms. Alston said she had no reason to doubt it, adding:

However, we feel that with additional service that is there, you will have greater flexibility in returning to the District, so that hopefully those problems will be minimized. [Tr. at p. 130]

We find that the City is dealing with these issues on an expedited basis, especially considering the fact that radically changed circumstances occurring in March have faced the City with responding to new and increased demands. Ms. Alston testified that the City's review of its survey form is anticipated in April and its survey in May. We find that the City should be given a reasonable opportunity to meet the new demands placed upon it before it can be faulted for not doing so. So far the City has shown every indication of responding quickly and effectively.

We find that there is no need for the basic service proposed by applicant, a redundant line-haul operation between downtown and Lorton. In the special circumstances of this case, we further find that the successful distinctions of applicant's service are insufficient to warrant authorization of the proposed service, including the redundant line-haul operation.

Relating these findings to the statutory requirements, supra, we do not find that the proposed service "is or will be required by the public convenience and necessity." Nor do we find that "there is an immediate and urgent need" for the proposed service. Accordingly, both applications must fail.

Applicant admits unauthorized operation of the proposed service. As a carrier who already held operating authority for other operations from both the Interstate Commerce Commission and the Maryland Public Service Commission, applicant's inquiry into the authority required for the Lorton operation may have lacked determination. Nevertheless, Mr. Utley established a dialogue with the police, took their advice to discuss the matter with this Commission, began work on his applications and ceased operations without having to be ticketed, arrested, or having his vehicles impounded. Such action before the police crackdown on unauthorized operations would enable us to make a finding of compliance fitness. There is little question that Mr. Utley is also willing and able to provide the proposed service. However, as we have said, the record raises a most serious question as to whether the proposed service is, or could be made, economically viable.

There is an additional and extraordinary element involved in the Lorton service that merits discussion and consideration, an element that helps explain the City's determination to underwrite virtually any level or configuration of service needed to transport all passengers to and from the Lorton facility. This element is the security of the passengers, vehicles, and the Lorton facility itself from contraband.

Indeed, it was this very element that led to the police crackdown on unauthorized operators and the tightening of security on the Metrobuses and at the Lorton facility. In addition to Mr. Utley's testimony about the arrests of drivers and the impoundment of vehicles, Ms. Alston testified:

When citizens complained about contraband on the bus, contact was made with metro's transit police to conduct periodic surveillance, and to enforce all appropriate rules and regulations. [Tr. at p. 97]

The very first question and answer on cross-examination by staff counsel were:

Q. Ms. Alston let me ask you first in light of the newspaper stories that were published about Lorton service, the various types in March. Does the District of Columbia have any policy vis-a-vis the bus service as it might interact with the efforts of the Department of Corrections to control contraband going in and out of Lorton Reformatory?

A. I would say that our policy is that we would certainly discourage contraband on the buses that are going down to Lorton, particularly the ones that are being operated on a contract basis. And that we are in contact with the metro transit police, who have authority over their equipment, and if there is evidence of illegal activity or contraband then that will be dealt with, but we do not support anything that would -- you know any sort of illegal activity going to Lorton. [Tr. at p. 112]

Later, Ms. Alston says:

What I can speak to is the way that the service on metrobus is handled, in that there is a supervisor, who is there at the time that the buses depart, and if there is some concern that there may be some illegal activity going on, that supervisor can contact the metro police, and people will be dealt with. And in the past where there has been incidents of marijuana smoking people have been removed from the bus, and they have not been allowed to continue -- you know they have not been allowed to take the trip to Lorton. [Tr. at p. 113]

Later, this exchange between Ms. Alston and staff counsel:

A. The District is very concerned about the activities that go on around our Lorton Correctional Facilities. And we feel that the service that is being provided falls within the area of that concern, which is the public transportation service. And that the District is simply concerned over the vehicles and the people that are going into the facility.

Q. Excuse me. They're concerned in what way? for security? or for some other reason?

A. They're concerned for a number of reasons, part of them have to do with security, part of them have to do with issues of contraband, and that the District feels that whatever measures that it can do

to ensure that the facility remains a safe and secure facility they will try to do that. [Tr. at pp. 127-128]

And again later:

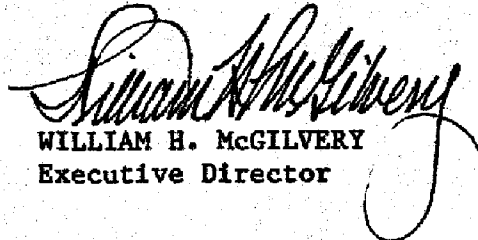
Q. So in your opinion then Ms. Alston security is the main consideration, is that a fair summary of what you said?

A. I think security, and I also think of safety for the people who are going down to Lorton. I believe that we have read accounts in the newspaper whether they be true or not about the fact that there were some very serious incidents that happened around some of the other forms of transportation that were going to Lorton in the Gitney service, and that certainly is an element that we are concerned about. Not that you can necessarily guarantee the safety of everybody, but with the enforcement officials that are available you can certainly make sure that people do have -- you know are reasonably assured of getting there in a safe and reliable manner. [Tr. at pp. 129-130]

The trip from Washington, D.C., to Lorton traverses at least three different police jurisdictions. Ms. Alston's testimony alluded to the fact that the Metro Transit Police have trans-jurisdictional authority with regard to service provided by Metro. This, in our opinion, is a compelling factor in the City's objective of control and enforcement to assure the safety and security of both the visitors to, and the inmates of, the Lorton facility. We have been cognizant of this element in our deliberations.

THEREFORE, IT IS ORDERED that the applications in Case Nos. AP-84-08 and AP-84-09 of Frank J. Utley, trading as Utley's Transportation Service, are hereby denied.

BY DIRECTION OF THE COMMISSION, COMMISSIONERS WORTHY, SCHIFTER AND SHANNON:


WILLIAM H. MCGILVERY
Executive Director